

the photographs of the bus carefully studied, it will be realised that the bus ran practically straight ahead from "D" to the point where it came to rest. Thus the exaggerated curved lines in the plan were highly misleading.

Having come to the above conclusion as to encroachment, I turn first to the evidence of the police inspector and next to that of the appellant himself. According to Inspector Balbeer Singh, the bend was not a blind corner and, coming from Teluk Anson, "it was possible to see about 100 yards round the bend." The high vantage point of the bus-driver's seat should have afforded him an even better field of view of at least the distance stated by the inspector. That being so, I proceed to examine the appellant's evidence to see when the oncoming Morris Minor came into his view. On this point he said: "When I saw the car encroaching on my side of the road it was 60 or 70 feet away. That was the first time I saw the car. At that time I was turning the corner". He then repeated, "The first time I saw the car it was 60 to 70 feet away and it was encroaching on my side." Then he went on, "If I had seen the car when it was 100 feet away the collision would have been avoided. There was a bend. I could not see the car earlier." Finally, in re-examination by his own counsel he said, "I cannot remember now whether I saw the car or not as it entered the bend."

Granting the appellant every indulgence, and making every allowance for inaccuracies in his estimate of distance, I think the irresistible inference, from his own account, is that he was taking no pains whatever to keep any look-out at all, but negligently assuming that the lonely road he travelled would continue so round the bend. This fact, and the evidence of encroachment, are not only mutually consistent, but each fortifies the other. How could he have failed to notice the oncoming car had he been looking ahead? Accordingly, I am as satisfied as the learned trial judge that there was clear evidence of negligence on the part of the appellant.

With the greatest respect, however, I take a different view of the deceased driver's share of blame for the accident. Of him the judge said: "The driver of the car also, in my opinion, was travelling fast and took no avoiding action." Yet, in spite of the most careful perusal of the record, I can find no evidence of speeding on his part, except what the appellant alleged to exonerate himself. The aggregate velocities of car and bus travelling at, say 35 miles per hours each, would be 70 miles per hour. The appalling wreckage of the car, therefore, would give no indication of its speed. It would have been as badly damaged, were it stationary when struck by the bus going at 35 miles per hour. Nor again, was there any evidence whatsoever that he failed to take evasive action, or even any evidence that he was left sufficient room to do

A so. Remembering that the road was only 18 feet wide, that the width of a passenger bus takes up almost half this road (I am informed by the registrar and inspector of motor vehicles that this particular bus AB. 6028 was 7' 6" wide and 29' 10" long), what evidence was there which makes it fair or reasonable that he should shoulder part of the blame? If the bus had suddenly gone a few feet over the white line, would the shock and surprise not have had such an effect that the car driver would have been frozen for a second or two? At the joint speed of 70 miles per hour, the vehicles would be hurtling towards each other at about 105 feet per second. Is it reasonable to expect that in a split second the driver ought to have made the agonising decision of ditching his car? I do not think such standard of care is required of him in the eyes of the law.

D For my part, therefore I would set aside the order of the court below, and award damages against this appellant solely. Costs of this appeal to both respondents, and in the court below, a *Bullock* order.

Barakbah L.P. and Azmi C.J. (Malaya) concurred.

Appeal dismissed.

E Solicitors: *Gibb & Co.; Murphy & Dunbar; Khoo & Sidhu.*

LEAW MEI LEE v. ATTORNEY-GENERAL & ORS.

F [F.C. (Barakbah L.P., Ong Hock Thye F.J. and Raja Azlan Shah J.) April 1, 1967]

[K.L. — Federal Court Civil Appeal No. X.97 of 1966]

G *Advocate & Solicitor — Admission of — Barrister — Petition for — Reading in Chambers and attendance at post-graduate course concurrently — "Previously" — Meaning of — Advocates & Solicitors Ordinance, 1947, s. 5(3)(a).*

* The material part of section 5(3) of the Advocates and Solicitors Ordinance, 1947 as amended is as follows:

"Before any order shall be made by the court on his petition every petitioner . . . shall have continuously attended and received instruction in law in the office in (Malaya) of a practising practitioner of not less than seven years' standing at the Bar of (Malaya) . . . namely:

(a) if the petitioner is a barrister of England . . . and has previously been a pupil of or read in the chambers of a practising barrister . . . of more than seven years' standing; and has

(i) been a pupil or read in chambers or in such office as aforesaid for six months or longer — a period of not less than six months;

(ii)

Provided that where a petitioner has obtained either a certificate issued by the Council of Legal Education that he has satisfactorily completed the Council's Post Final Practical Course, or a certificate issued by the University of Malaya that he has satisfactorily completed a post graduate course of instruction organised by the university, the provisions of this paragraph shall apply to such petitioner as if he had been a pupil or read in chambers as aforesaid for a period of six months.

(b) if the petitioner is a solicitor . . . of England . . .

(c) in any other case — a period of not less than twelve months".

Interpretation — Construction of statutes — Ambiguous language.

The petitioner a barrister-at-law was called to the English Bar in July 1965. She attended the post-graduate course organised by the University of Malaya while reading in the chambers of a local practitioner. The petitioner applied for admission as an advocate and solicitor. She contended that she had complied with the provisions of section 5(3)(a) of the Advocates and Solicitors Ordinance, 1947 as firstly, the section creates with retrospective effect, a notional reading in chambers, and secondly, it does not prevent a person from reading in chambers and doing the post-graduate course at the same time so long as the University course was done outside the usual office hours. The petition was opposed by the Bar Council on the ground that the section requires the post-graduate course to be done previous to the reading in chambers. Gill J. held that the petitioner had not complied with section 5(3) of the said Ordinance as she had not done the post final course "previously" to reading in chambers. On appeal to the Federal Court,

Held: (Barakbah L.P. dissenting) the petitioner could do the post graduate practical course and read in chambers concurrently for otherwise it would endow the certificate of the University with mystical powers that the same practical instruction which goes to one's credit when secured after the post graduate course counts for absolutely nothing if taken before and further it would prolong the petitioner's period in chambers for nearly 12 months.

Per Ong Hock Thye F.J.: If the language used in the statute is ambiguous and capable of two constructions, the proper course is "to adopt the construction which will give some effect to the words rather than that which will give none." If a too literal adherence to the words of an enactment appears to produce an absurdity or an injustice, it should be the duty of the courts to ascertain whether the language is capable of any other fair interpretation.

Cases referred to:—

- (1) *R. v. East Ardsley* (1850), 14 Q.B. 801.
- (2) *Cargo ex Argos* (1893), L.R. 5 P.C. 134, 153.
- (3) *Sheffield v. Radcliffe* (1616), Hob. 346.
- (4) *Rein v. Lane* (1867), L.R. 2 Q.B. 144, 151.

FEDERAL COURT.

M. Shankar for the appellant.

R. R. Chelliah and *K. A. Menon* for the Bar Council, and Bar Committee.

Ajaib Singh for the Attorney-General.

Cur. Adv. Vult.

Barakbah L.P.: This is an appeal against an order dismissing the petition of the appellant for enrolment as an advocate and solicitor of this Honourable Court under the Advocates and Solicitors Ordinance. The petitioner was called to the English Bar at Gray's Inn on the 20th day of July, 1965. She did not do the post-final course of the Council of Legal Education in England but returned to this country. On the 19th of January, 1966, she filed her petition as required by the Advocates and Solicitors Ordinance and thereafter attended the office of D. G. Rawson, Esq., an advocate and solicitor of this court until the 27th day of July, 1966, for a period of six months. From 14th March, 1966, up to the 4th of June she attended the post-

A graduate course of instruction organised by the University of Malaya which was done outside office hours. On 25th August, 1966, she was issued with a certificate that she had satisfactorily completed the said course by the Vice-Chancellor of the University. She also got through her *viva* on 16th July, 1966. On the 1st of November, 1966, her petition came up for hearing. At the hearing objection was taken by the Bar Council, the Bar Committee and the Attorney-General. The objection was upheld by the learned judge and the petition was dismissed.

Against that order of dismissal the petitioner now appeals.

C The objection against the petition and the judgment upholding these objections all centre on the correct interpretation to be placed upon section 5(3) of the Advocates and Solicitors Ordinance and in particular on the effect of the proviso thereto. The sub-section is primarily, indeed solely, concerned in fixing a period for the qualified person to attend and receive instruction in the office of a local practitioner of the requisite standing. That period is subject to two limits — a minimum of 6 months and a maximum of 12 months. Even if the person seeking admission should have read in chambers in England for a period longer than twelve months, he cannot avoid the minimum six months of local reading. Naturally since the ascertainment of the period for local reading is based on other reading or pupillage elsewhere, the word "previously" is used in paragraph (a) of the sub-section. The proviso to paragraph (a) governs the whole paragraph, that is, the mathematical ascertainment of the period in the several given circumstances: should it be the maximum or a period less than the maximum, subject always to the minimum of six months. The effect of the proviso is to equate "the period of pupillage elsewhere" with the "completion of the post final course of the Council of Legal Education" and similarly with "the post-graduate instruction by the University of Malaya and the issuance of a certificate" thereon. This means, in effect, any one of the three alternatives mentioned above — (i) pupillage elsewhere; (ii) post-final course in London; and (iii) post-graduate course in Malaya shall be treated as equivalent to having read in chambers of a local advocate and solicitor to the minimum of six months. In the instant case, if the petitioner has done a post-graduate course in Malaya then, he or she shall have to read in chambers for a period of six months. Therefore the right to read for six months — and no longer — does not commence or accrue or become capable of being availed of until the post-graduate course has been completed. It is also to be noted that the proviso picks up the language of paragraph (a) from "been a pupil of or read in the chambers of" and does *not* include the word "previously".

The proviso therefore does not declare any rights other than an equation in terms of extent of the period in respect of alternatives (ii) and (iii) above. Any other interpretation would mean and can only mean one of two things, either (a) in the case of a post-graduate course the paragraph of the sub-section has to be construed as if the word "previously" were not there, or (b) the word "previously" may in any appropriate case, as in the instant case, be construed as "concurrently". Neither is permissible as a matter of not a "strict" but a mere "fair" interpretation of the sub-section: no word in a statute can be ignored; it must be given its ordinary grammatical meaning in its interpretation.

I would therefore dismiss the appeal.

Ong Hock Thye F.J.: I have read with the keenest interest the judgment of the learned Lord President. With the greatest respect, however, I am still firmly of the opinion which I held at the conclusion of the arguments on both sides.

In a nutshell, the word "previously" has been misconstrued on all hands without sufficient regard to the context in which it appears. It has, in fact, been a veritable red herring. It has been so because paragraph (a) has been read only with the proviso, as if nothing else in the whole of sub-section (3) mattered.

The plain, and indeed only logical, answer to the problem lies in the words of sub-section (3) which immediately precede paragraph (a), "for the period hereinafter mentioned, namely:". The object and purpose of the ensuing paragraphs (a), (b) and (c), thus expressly stated, is solely and simply to define the period of instruction received by the petitioner before applying for enrolment as an advocate and solicitor. Can a single word in paragraph (a), therefore, be held as introducing a condition precedent? I think not. The conditions to be fulfilled and the procedure to be followed by the petitioner are all laid down with meticulous particularity and, let me emphasise it, distinctly itemised in sections 5, 6 and 7. Hence it is absurd to read the word "previously" as importing, by mere implication, a further condition precedent of such a stringent nature as that for which Mr. Chelliah contends.

Once this simple fact is appreciated — and I do not see how it can be ignored in the teeth of the phrase "for the period hereinafter mentioned, namely:" — then the meaning of the word "previously" will not be magnified to a degree which it cannot possibly have in its proper context.

This conclusion is inescapable if the structure of sub-section (3) is studied as a whole. The opening words provide generally for practical instruction in an office. The period of such instruction then varies according as the petitioner

A is (a) a barrister who has previously been a pupil or read in chambers, (b) a solicitor, or (c) otherwise a qualified person, including the barrister who has not previously been a pupil or read in chambers. For the last two categories a definite term of 6 months and 12 months respectively is laid down.

B For barristers, however, advantage can be taken of pupillage or reading in chambers (obviously in England) to abbreviate the period by anything up to the irreducible minimum of 6 months. Whereas, in the case of solicitors and others, it was sufficient to designate the two categories in very simple and concise terms, for C the first category a compendious description had to run to 52 words, starting with "if the petitioner is a barrister" to "Bachelor of Laws of the University". For such petitioner the period of instruction then varies according to the formula. This formula is based on pupillage or reading in chambers. Pupillage, of course, precedes call to the Bar. It is therefore manifest, at least to me, that, when the ambit of paragraph (a) is appreciated, it is the length of such instruction in England that mattered not whether the person concerned had been receiving instruction before or after call to the Bar — so long as such instruction in point of time precedes the filing of the petitioner. On this view the word "previously" must fall naturally into its own proper place. The first 52 words in para (a), then, is the nominative, while the rest of the paragraph is no more than a qualifying phrase covering all persons who had been pupils or had studied in chambers. Any other construction of the word "previously" leads to such absurdities that I, for one, will not countenance it.

The contention of the Bar Council, which found favour with Gill J. is:—

G "That upon a true construction of section 5(3)(a) of the Ordinance the petitioner is required to have read in chambers in England for six months, or done the post final practical course by the Council of Legal Education in England or the post-graduate course of the University of Malaya previously to his reading in chambers of a local barrister for six months. In other words . . . the sequence to be followed is (1) call to the English Bar, (2) reading in chambers or doing the post-graduate University of Malaya course and (3) reading in the chambers of a local practitioner."

The learned judge went on to say:—

I "The emphasis, in my opinion, must be on the word 'previously' because it qualifies the reading in chambers in England as well as the two courses which are deemed to be the equivalent of reading in chambers in England for six months."

The effect of such a construction is stated by the learned Lord President as follows:—

"In the instant case. if the petitioner has done a post-graduate course in Malaya, then he or she shall have to read in chambers for a period of six months. Therefore the right to read in chambers for six months — and no longer — does not commence or accrue or become

capable of being availed of until the post-graduate course has been completed."

This, I regret to have to point out, has the startling result that (i) it endows the certificate of the University with such mystical powers that the same practical instruction which goes to one's credit, when received after the post-graduate course, counts for absolutely nothing if taken before, and (ii) it compels Miss Leaw, in the instant case, to prolong her study in the office of Mr. Rawson until December 1966, that is to say, for nearly 12 months.

If, as is conceded, the University post-graduate course is notionally equated with pupillage or reading in chambers in England for a period of six months, by virtue of the proviso to sub-section 3(a), it seems to me, again expressing my opinion with the greatest respect, that compelling Miss Leaw to receive instruction for nearly 12 months renders the proviso quite nugatory.

To avoid any absurd result, as is achieved in this case, the court may be constrained to reject the word "previously" as surplusage if it appears that "by attempting to give meaning to every word, we should", as Coleridge J. said in *R. v. East Ardsley*,⁽¹⁾ "have to make the Act of Parliament insensible" or if it is clear that otherwise the manifest intention of the Legislature will be defeated.

There is, however, an alternative in the rule enunciated by the Privy Council in *Cargo ex Argos* ⁽²⁾ that, if the language used in a statute is ambiguous and capable of two constructions, the proper course is "to adopt that construction which will give some effect to the words rather than that which will give none." How else does one give any effect to the proviso except by relegating the word "previously" to its proper place in the context? As Lord Hobart said in *Sheffield v. Radcliffe* ⁽³⁾ :—

"If you ask me by what rules the judges guided themselves in diverse expositions of the same word and sentence, I answer, it is by that liberty and authority which judges have over statute laws according to reason and best convenience to mould them to the truest and best use."

If a too literal adherence to the words of an enactment appears to produce an absurdity or an injustice, it should be the duty of the courts to ascertain whether the language is capable of any other fair interpretation. In an endeavour to arrive at the true interpretation, therefore, the word that raises such controversy here ought not to have been viewed as detached from its context. As Blackburn J. said in *Rein v. Lane* ⁽⁴⁾ :—

"It is, I apprehend, in accordance with the general rule of construction in every case, that you are not only to look at the words, but you are to look at the context, the allocation, and the object of such words relating to such a matter, and interpret the meaning according to what would appear to be the meaning intended to be

A conveyed by the use of the words under such circumstances."

I think I have said enough, out of respect to contrary views, to indicate by what process of reasoning I venture to differ. There is no canon of construction which compels me not only to do injustice, but also to make the law an ass.

B I would therefore, allow the appeal, set aside the order of Gill J. and allow the petition.

Raja Azlan Shah J.: The present appeal turns upon the interpretation of section 5(3) (a) of the Advocates and Solicitors Ordinance, 1947. It is important to note that the section itself has been amended three times, and it is in the light of these amendments that I propose to consider the present appeal.

The position in 1950:

D If a petitioner is a barrister of England and has previously been a pupil of or read in chambers of a practising barrister in England or a member of the Faculty of Advocates in Scotland of more than seven years standing or in the office of a practising solicitor of the Supreme Court of Judicature of England and Northern Ireland, etc., for a period of six months or longer, then he must continuously attend and receive instruction in law in the office of a local practising practitioner of not less than seven years standing for a period of six months; but if he has been a pupil of or read in chambers or "in such office" for a period of less than six months, then the period he has to read in chambers in the Federation must be such period as together with the period during which he has read in chambers or in the office of the practising solicitor in England makes a total of twelve months.

The position in 1955:

G There was inserted a proviso, viz. where a petitioner has obtained a certificate issued by the Council of Legal Education of England that he has satisfactorily completed the Council's post-final practical course, that is to be equated with pupillage or reading in chambers in England for a period of six months. Therefore, in 1955 the position is this: if the petitioner is a barrister of England and has obtained the post-final certificate he is only required to read in the chambers of a local practising practitioner for a period of six months.

The position in 1961:

I In 1961 the 1955 proviso was substituted by a new proviso which re-enacts the old one but adding that a practitioner who has been issued with a certificate by the University of Malaya that he has satisfactorily completed a post-graduate course of instruction organised by the University is also to be equated with pupillage or reading in chambers in England by a period of six months. The position then will be as

follows: if the petitioner is a barrister of England and has obtained the post-graduate certificate he is only required to read six months in the chambers of a local practising practitioner.

In any event, the proviso provides an equation as to the length of the notional reading in chambers. It was argued before us for the Bar Council that the notional reading of six months can only arise if the post-graduate course precedes local reading in chambers. It is the validity of this argument that calls for consideration. Does the section stipulate such a situation? I admit freely that the section seems to be capable of that construction. No doubt if you read it literally it does seem to provide that where a petitioner has obtained a post-graduate certificate "the provisions of this paragraph shall apply "as if he had been a pupil or read in chambers as aforesaid for a period of six months". There appeared to have been a statutory fiction gone through, the result of which is that the post-graduate certificate stands on the same footing as if the petitioner had been a pupil or read in chambers for a period of six months. But, on the other hand, is that the only interpretation? For that purpose, I think, we must consider what the object of this provision is. Why is it that there is this statutory fiction introduced? The section obviously is not one which has been prepared with much care or skill, or which shews indeed that the draftsman had fully present in his mind the various cases with which he had to deal. Now, I take it that the purpose of this section as it stood in 1961 was to accommodate the post-graduate course organised by the University of Malaya in Singapore. There was no such course in Kuala Lumpur. Unless I am told otherwise, the course in Singapore was conducted during office hours. The post-graduate course organised by the University in Kuala Lumpur was established in the latter part of 1965 and such a course, I am told, is conducted in the evening and outside office hours in order to allow practising practitioners to conduct it so that their routine business will not be interrupted.

The Bar Council conceded that if the petitioner had completed the post-graduate course done outside office hours and then followed by a six months local reading in chambers the petition is not objectionable. But they argued that if the petitioner had done the same post-graduate course outside office hours concurrently with the local reading in chambers for a period of six months it is said that that violates the object of the section. Their sole argument which commends itself to the trial judge rests on the word "previously" which appears immediately after paragraph (a) of the sub-section. It appears to them legitimate to say that the literal construction of the provisions of that section affords the stand which they have taken. I cannot subscribe

A to that view. That is to ignore the purpose and object of the post-graduate course which is essentially a course in advocacy as distinct from substantive law which is acquired in chambers. To my mind, the word "previously" has been strained beyond permissible limits and due regard has not been made to interpret the section in its proper context. It would be the height of absurdity to hold that while the reading in chambers for a period of six months which is preceded by a post-graduate course done outside office hours is good, the reading in chambers for a period of six months concurrently with the post-graduate course done outside office hours is invalid. When the language of the legislature construed literally involves such consequences, the court has over and over again acted upon the view that the legislature could not have intended to produce a result which would be palpably unjust, and would revolt the mind of any reasonable man, unless they have manifested that intention by express words.

I would allow the appeal and admit the petitioner.

Appeal allowed.

Solicitors: *Shearn, Delamore & Co.*

TAN TIAN QUEE v. KUPPUSAMY

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Buttrose J.) April 6, 1967]

[Singapore — Federal Court Appeal No. Y19 of 1966]

Contract — Sale of land — Option to agent for — First option for sale with vacant possession — Second option for sale without vacant possession — Scope of authority of agent — Breach of contract.

Agency — Scope of authority of agent — Agent acting outside scope of authority.

The respondent gave a written option to his agent one N for the sale of his property at Kings Road, Singapore. Although there was no mention of vacant possession in the option N on February 23, 1963 represented to the appellant that the property was for sale with vacant possession. What transpired after this was not very clear but the appellant maintained that the parties had entered into a formal written contract on April 9, 1963 (although this was never produced in court) which the respondent denied. The respondent's case was that the appellant had given two options one of which stipulated the sale was with vacant possession and the other did not.

The appellant sued for specific performance of the contract for the sale of the property or alternatively damages for breach of contract. The respondent counter-claimed for refund of the deposit for failure on the appellant's part to complete. In the court below the trial judge dismissed the appellant's claim and allowed the counterclaim ([1966] 2 M.L.J. 226). On appeal, 1,

Held: (1) in the circumstances of this case the second option clearly cut down and limited the agent's original authority to effect a sale. In the first option he had express authority to sell with vacant possession; in the second option by the palpable omission of all reference to this express condition his authority was limited to sell without vacant possession. Therefore in